

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

|                            |   |                             |
|----------------------------|---|-----------------------------|
| LINDELL SWINSON,           | ) |                             |
|                            | ) |                             |
| Plaintiff,                 | ) |                             |
| v.                         | ) | Civil Action No. 07-26 Erie |
|                            | ) |                             |
| DEPARTMENT OF CORRECTIONS, | ) |                             |
| et al.,                    | ) |                             |
|                            | ) |                             |
| Defendants.                | ) |                             |

**MEMORANDUM ORDER**

\_\_\_\_\_ Plaintiff's civil rights complaint was received by the Clerk of Court on February 21, 2007 and was referred to Chief United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Chief Magistrate Judge's Report and Recommendation, dated December 1, 2008 [109], recommends that:

- (1) the Motion to Dismiss [76] filed by Defendant Peter Longstreet, M.D., be granted;
- (2) the Motion to Dismiss [94] filed on behalf of the DOC Defendants be granted in part and denied in part; and
- (3) Pursuant to the Court's authority under the Prison Litigation Reform Act, the Plaintiff's claims against Defendants Faulk, Hirz, Blakely, Reilly, Bender, Vanderlip, Gibbs, Fies, Armeni, Sullivan, Balos, Gilmore, Caldwell, Gilbert, Sutter, White, Fullum, Boughner, Severo, and Patterson be dismissed in their entirety, as Plaintiff has failed to serve said Defendants within 120 days in accordance with the requirements of Rule 4(m) of the Federal Rules of Civil Procedure.

The parties were given 10 days in which to file objections to the Report and Recommendation. Plaintiff filed his objections [110] on December 17, 2008.

After de novo review of the complaint and documents in the case, together with the Report and Recommendation and Plaintiff's objections thereto, the following order

is entered:

AND NOW, this 5<sup>th</sup> day of January, 2009;

IT IS HEREBY ORDERED that:

- (1) the Motion to Dismiss [76] filed by Defendant Peter Longstreet, M.D., be, and hereby is, GRANTED; and
- (2) the Motion to Dismiss [94] filed on behalf of the DOC Defendants be, and hereby is, GRANTED in part and DENIED in part, as follows:
  - a. The motion is DENIED with respect to Plaintiff's retaliation claims against Defendants Christopher and Palko based on the allegations that they filed of "false" misconducts and had Plaintiff placed in disciplinary custody. The motion is further DENIED with respect to Plaintiff's retaliation claim against Defendant Palko based on the allegation that Defendant Palko forcibly shoved Plaintiff into another inmate's cell.
  - b. The motion is GRANTED in all other respects.

IT IS FURTHER ORDERED that, pursuant to the Court's authority under the Prison Litigation Reform Act, the Plaintiff's claims against Defendants Faulk, Hirz, Blakely, Reilly, Bender, Vanderlip, Gibbs, Fies, Armeni, Sullivan, Balos, Gilmore, Caldwell, Gilbert, Sutter, White, Fullum, Boughner, Severo, and Patterson be dismissed in their entirety, as Plaintiff has failed to serve said Defendants within 120 days in accordance with the requirements of Rule 4(m) of the Federal Rules of Civil Procedure.

The Report and Recommendation of Chief Magistrate Judge Baxter, dated December 1, 2008 [109], is adopted as the opinion of this Court.

s/ SEAN J. McLAUGHLIN  
Sean J. McLaughlin  
United States District Judge

cc: all parties of record  
Chief U.S. Magistrate Judge Baxter